

BOOK REPORTS

TITLE: **Evidence from earth observation satellites**
 EDITORS: **Ray Purdey and Denise Leung**
 DATE AND PLACE OF PUBLICATION: **Leiden, 2013**
 PUBLISHER: **Martinus Nijhoff**
 ISBN: **978 90 04 19443 4**

This interdisciplinary volume brings together authors from academia, government, international institutions, industry and the judiciary to consider some of the emerging issues surrounding the use of digital evidence from earth observation satellites. The text covers a technical introduction to digital evidence from satellites, the use of such evidence at national level in the United States of America, Singapore, Queensland and Taiwan. The European Union context is also considered, as is the use of digital evidence from satellites in international institutions and by the prosecutor of the International Criminal Court.

Privacy and copyright are covered, together with judicial perspectives in the United States of America and Belgium. Other topics include a technical approach to authentication of digital evidence that completely ignores the legal issues, and an introduction to the use of digital signatures for the purposes of time stamping.

It is perplexing to discover that evidence from earth observation satellites appears to be considered to be unique to satellites, when in fact it is merely digital data, and therefore digital or electronic evidence. None of the text books on electronic evidence by practitioners are cited (nor text books on electronic signatures). This is a useful text, but nevertheless a somewhat one-sided reading of digital evidence that is in danger of giving the wrong impression of the technical issues relating to the authentication of digital evidence – not only from other devices (mobile telephones, computers, PDAs, etc) but from satellites as well.

TITLE: **Electronic Signatures for B2B Contracts**
 AUTHOR: **Aashish Srivastava**
 DATE AND PLACE OF PUBLICATION: **India, 2013**
 PUBLISHER: **Springer**
 ISBN NUMBER: **978 81 322 0742 9**

This book is the PhD thesis of Aashish Srivastava.

This book presents the findings of an empirical study on large public listed Australian companies that examined businesses' perception towards the use of electronic signatures in B2B contracts. Essentially, it identifies six factors that create a disincentive to businesses to move from the practice of paper- based signatures to the new technology of electronic signatures.

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TITLE: **Digital Evidence in Criminal Law**
 AUTHOR: **Daniel M. Scanlan**
 DATE AND PLACE OF PUBLICATION: **2011, Canada**
 PUBLISHER: **Thomson Reuters Canada Limited**
 ISBN NUMBER: **978 0 88804 502 7**

It is refreshing that Mr Scanlan indicates in his introduction, that 'Dealing with electronic evidence is now a required skill set in almost all litigation' (p 1), a comment that was discussed in editorials of this journal in 2010 and 2012, and supported during the *International Conference on Digital Evidence (2008)* held in London, at which the Honourable Justice J. E. (Ted) Scanlan, Supreme Court of Nova Scotia spoke, together with a number of other judges across the globe:

The Honourable Judge Francis M. Allegra, U.S. Court of Federal Claims

The Honourable Judge Dr. Ehab Elsonbaty, Senior Judge, Damanhour Court, Egypt

The Honourable Judge Jumpol Pinyosinwat, Presiding Judge, Central Intellectual Property and International Trade Court, Thailand

Senior Master Whitaker, Senior Master of the Supreme Court of England and Wales, Queen's Bench Division, Royal Courts of Justice and the Queens Remembrancer

This issue is so important, that an outline syllabus for teaching electronic evidence is included in this issue of the journal.

This book is a welcome addition to the texts already available:

Michael R Arkfeld, *Arkfeld on Electronic Discovery and Evidence* (3rd edn, Lexis, 2011) Looseleaf, covering the United States of America

Jay E. Grenig, William C. Gleisner, Troy Larson and John L. Carroll, *eDiscovery & Digital Evidence* (2nd edn, Westlaw, 2011) Looseleaf, covering the United States of America

Michele C.S. Lange and Kristen M. Nimsger, *Electronic Evidence and Discovery: What Every Lawyer Should Know* (2nd edn, American Bar Association, 2009), covering the United States of America

Stephen Mason, gen ed, *Electronic Evidence* (3rd edn, LexisNexis Butterworths, 2012), covering Australia, Canada, England & Wales, European Union, Hong Kong, India, Ireland, New Zealand, Scotland, Singapore, South Africa and the United States of America

Stephen Mason, gen ed, *International Electronic Evidence*, (British Institute of International and Comparative Law, 2008), covering Argentina, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Norway, Poland, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand and Turkey

George L. Paul, *Foundations of Digital Evidence* (American Bar Association, 2008), covering the United States of America with some additional chapters

Paul R. Rice, *Electronic Evidence – Law and Practice* (American Bar Association, 2005), covering the United States of America

Allison Stanfield, *Computer Forensics, Electronic Discovery & Electronic Evidence* (LexisNexis Butterworths, 2009), covering Australia

This text follows the usual pattern of books on the topic that once should expect in the context of criminal proceedings, covering the types and sources of electronic evidence (chapters 7 and 9), some of the characteristics

of electronic evidence (chapters 2, 9 and 10), privacy (chapter 3), the scope of the search for data (chapter 4), interception (chapter 5), digital forensics (chapter 6), disclosure (chapter 8), and digital evidence specialists (chapter 11).

On the specific point about authentication, the author correctly comments that ‘... the legal profession must be careful not to hold electronic evidence to a higher standard of authentication than required of traditional forms of evidence’ (p 6), although consideration should also be given to the ‘reliability’ of electronic evidence, covered in Paul, *Foundations of Digital Evidence*. This is borne out by the comment that in theory it would have been difficult to forge a document that was authenticated with a stamp imprinted in wax that hung around the neck of a bishop – but an acknowledgment that forgery was a concern well before the digital age (p 7).¹ Indeed, the comments cited by Owen-Flood J in the case of *R. v. Hall* [1998] B.C.J. No. 2515, 40 W.C.B. (2d) 10 (S.C.) at 58 and 64 highlight the misconception by members of the judiciary that software is somehow irrelevant: the fact is, software written by human beings controls computers and computer-like devices, and is subject to error, as pointed out in Mason, *Electronic Evidence*, chapter 5. It is refreshing that the author correctly identifies that the concept of ‘original’ can no longer be attributed to evidence in electronic format.²

The discussion relating to proof that a person can be held to be responsible for the actions recorded on a computer are of great interest, given the author is a prosecutor. In particular, the author observes that when a browser is shut down, temporary copies of web sites ‘visited’ are retained in the temporary cache. The author argues, in the light of the decision in *R. v. Morelli* (2010) 252 C.C.C. (3d) 273, that ‘... logic dictates there was sufficient knowledge of the material if the evidence demonstrates that it was displayed for that user’ (p 233). However, it is only possible to make such a link if there is other evidence that the user was aware of the material, as discussed by the author in the light of the case of *R. v. Chalk* (2007), 227 C.C.C. (3d) 141 (pp 234-235), and in more detail at p 238 and pp 241-261 – unlike the position in the case of *Julie Amero*, where the prosecution wrongly sought to prove intent on the basis that copies of web sites alleged to have been visited were recorded in the temporary cache.³

¹ As indicated in Lorna Brazell, *Electronic Signatures and Identities Law and Regulation* (2nd edn, London: Sweet & Maxwell, 2008) and Stephen Mason, *Electronic Signatures in Law* (3rd edn, Cambridge University Press, 2012).

² A haiku was written on the topic in 2008: Stephen Mason, ‘Electronic evidence and the meaning of “original”’ *Amicus Curiae The Journal of the Society for Advanced Legal Studies*, Issue 79 Autumn 2009, 26-28, available on-line at <http://sas-space.sas.ac.uk/2565/>.

³ A detailed analysis of this case is provided in Stephen Mason, gen ed, *International Electronic Evidence* (British Institute of International and Comparative Law, 2008), pp xxxvi – lxxv.

More generally, the discussions regarding the admissibility and authentication of electronic evidence and the problematic areas of searching and interception (both of which are now a serious area of concern for those responsible for investigating crimes perpetrated over networks and across the jurisdictional boundaries) are useful, and it is uplifting to note that the author is explicit that no digital evidence specialist can be an ‘expert’ in all areas of digital evidence. The field is very wide, and the discussion in chapter 11 serves well to highlight the issues involved with this important area of legal proceedings.

There is no doubt that this text is a useful addition to the books on the topic, and it that compliments the work by Robert J. Currie⁴ and Steve Coughlan⁵ in chapter 9 ‘Canada’ in Mason, *Electronic Evidence*.

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Criminal Reports, the Criminal Law e-Letter (National Judicial Institute), and the author of Criminal Procedure (2nd edn, Irwin Law, 2012).